

documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would:

(1) Constitute a final decision under the Disputes clause,

(2) Involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304-5 or 14 CFR 1245.1, or

(3) Otherwise be outside the scope of the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should be conducted to explain these rights and obligations (see FAR subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on in-

ventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

1827.375-4 Conveyance of invention rights acquired by the Government.

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227-70, New Technology, a determination of title is to be made in accordance with section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph (a) of this section, FAR 27.305-4 shall apply.

1827.375-5 Publication and release of invention disclosures.

FAR 27.305-5 shall apply.

1827.376-6 Licensing of background rights to third parties.

FAR 27.306 shall apply.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

(a) *Alternate definition of limited-rights data.* When the clause at FAR 52.227-14, Rights in Data—General, is used with Alternate I, but without Alternate II or Alternate III, all data qualifying as limited-rights data as defined in Alternate I may be withheld from delivery, and any study or report delivered under the contract will contain only unlimited rights data that may be disseminated by NASA. If delivery of withholdable data is required, Alternate II or Alternate III, as applicable, may be used, but any data subject to these alternates will be delivered under the applicable limited-rights or restricted-rights notices and therefore may not be disclosed outside NASA except to the extent permitted by these notices (see FAR 27.404 (d) and (e)).

(b) *Protection of limited-rights data specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of limited-rights data and/or the use of Alternate II that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(c) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise:

(1) From an offeror's response to the provision at FAR 52.227-15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(d) *Copyrighted data.* (1) The Contracting Officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(2) Obtaining a copyright license of a different scope than set forth in paragraph (c)(1) or (2) of the clause at 52.227-14, Rights in Data—General, for any contract or class of contracts in accordance with either FAR 27.404(f)(1)(iv) or FAR 27.404(f)(2)(i), is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) *Release, publication, and use of data.* (1) Paragraph (3) (see 1827.409(e) and 1852.227-14) is to be added to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors.

(2) The contracting officer may, in consultation with the installation's Patent or Intellectual Property Counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if—

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;